

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GLORIA R.,

Plaintiff,

V.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE No. 2:21-cv-01689-TL

ORDER REVERSING, IN PART, AND
REMANDING THE COMMISSIONER'S
FINAL DECISION

Plaintiff seeks review of the denial of her application for disability insurance benefits.

Plaintiff contends the Administrative Law Judge (“ALJ”) erred by rejecting her testimony, ignoring the medical opinion of Dr. Amie Shah, and improperly assessing her residual functional capacity (“RFC”). Dkt. No. 11, at 1. For the reasons discussed below, the Court REVERSES IN PART the Commissioner’s final decision and REMANDS the matter for further administrative proceedings under 42 U.S.C. § 405(g).

I. LEGAL STANDARD

This Court may set aside the Commissioner's denial of Social Security benefits only if the ALJ's decision is based on legal error or not supported by substantial evidence in the record.

Ford v. Saul, 950 F.3d 1141, 1154 (9th Cir. 2020); *see also Havens v. Kijakazi*, No. 21-35022,

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1 2022 WL 2115109, at *1 (9th Cir. June 13, 2022) (applying the standard and reversing ALJ’s
 2 decision). The ALJ is responsible for evaluating evidence, in part by resolving conflicts in
 3 medical testimony and resolving any other ambiguities that might exist. *Ford*, 950 F.3d at 1149
 4 (quoting *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995)). When the evidence is
 5 susceptible to more than one interpretation, the ALJ’s interpretation must be upheld if rational.
 6 *Ford*, 950 F.3d at 1154. The Court “must examine the record as a whole” and may not affirm the
 7 ALJ’s decision simply by ‘isolating a specific quantum of supporting evidence.’” *Ghanim v.*
 8 *Colvin*, 763 F.3d 1154, 1160 (9th Cir. 2014) (quoting *Hill v. Astrue*, 698 F.3d 1153, 1159 (9th
 9 Cir. 2012)). Finally, this Court “may not reverse an ALJ’s decision on account of a harmless
 10 error.” *Buck v. Berryhill*, 869 F.3d 1040, 1048 (9th Cir. 2017) (citing *Molina v. Astrue*, 674 F.3d
 11 1104, 1111 (9th Cir. 2012)).

12 II. DISCUSSION

13 Under the Social Security Act, a claimant is considered “disabled” if: (1) the individual is
 14 “unable to engage in any substantial gainful activity by reason of any medically determinable
 15 physical or mental impairment which can be expected to result in death or which has lasted or
 16 can be expected to last for a continuous period of not less than twelve months,” 42 U.S.C.
 17 § 1382(c)(a)(3)(A), and (2) the individual’s physical or mental impairment or impairments are of
 18 such severity that [the person] is not only unable to do [the person’s] previous work but cannot,
 19 considering [the person’s] age, education, and work experience, engage in any other kind of
 20 substantial gainful work which exists in the national economy,” 42 U.S.C. § 1382(c)(a)(3)(B). To
 21 determine whether a claimant is disabled within the meaning of the Social Security Act (and,
 22 therefore, eligible for benefits), an ALJ follows a five-step sequential evaluation pursuant to 20
 23 C.F.R. § 404.1520.(a):

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- 1 1 Determine if the claimant is presently engaged in a “substantial gainful activity.”
2 § 404.1520(a)(4)(i). If so, then the claimant is not disabled. If not, then the ALJ
3 proceeds to step two.
- 4 2 Decide whether the claimant's impairment or combination of impairments is
5 “severe,” § 404.1520(a)(4)(ii), meaning that it significantly limits the claimant's
6 “physical or mental ability to do basic work activities. § 404.1522(a). If the
7 impairment(s) is severe, then the ALJ proceeds to step three.
- 8 3 Evaluate whether the claimant has an impairment, or combination of impairments,
9 that meets or equals the criteria of any of the impairments listed in the “Listing of
10 Impairments.” § 404.1520(a)(4)(iii). If so, then the ALJ proceeds to step four.
- 11 4 Assess the claimant's residual functional capacity (RFC) to determine whether the
12 claimant can perform past relevant work. If so, then the claimant is not disabled.
13 If not, then the ALJ proceeds to step five.
- 14 5 Assess whether “the claimant can perform a significant number of other jobs in
15 the national economy.” If so the claimant is not disabled.

16 *Ford v. Saul*, 950 F.3d at 1148 (citations omitted). The burden of proof is on the claimant at steps
17 one through four but shifts to the agency to prove that “the claimant can perform a significant
18 number of other jobs in the national economy” at the fifth step. *Id.* at 1149 (citation omitted).

19 In this case, the ALJ determined that Plaintiff cannot perform her past work, but has the
20 RFC to perform light work with some postural, environmental, and mental limitations.
21 Administrative Record (“AR”) 20.¹ Based on Plaintiff's RFC and relying on vocational expert
22 testimony, the ALJ found Plaintiff can perform a significant number of jobs in the national
23 economy; and therefore, Plaintiff is not disabled. AR 23–24. Plaintiff challenges the ALJ's
decisions at steps four and five, specifically the ALJ's evaluation of her symptom testimony, the
medical opinion of Dr. Amie Shah, and the ALJ's RFC assessment.

24 A. **Plaintiff's Subjective Symptoms Testimony**

25 Where as here, an ALJ determines that a claimant has presented objective medical

26 ¹ The Administrative Record is filed as a sealed record at Docket No. 9.
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1 evidence establishing underlying impairments that could cause the symptoms alleged, and there
 2 is no evidence of malingering, the ALJ can only discount the claimant's testimony as to
 3 symptom severity "by offering specific, clear and convincing reasons for doing so." *Garrison v.*
 4 *Colvin*, 759 F.3d 995, 1014–15 (9th Cir. 2014). Plaintiff contends the ALJ erred by failing to
 5 give clear and convincing reasons for rejecting her symptom testimony. Dkt. No. 11, at 2–5.

6 Plaintiff testified she stopped working due to a combination of her mental and physical
 7 health symptoms. AR 46. With regard to her mental health symptoms, Plaintiff testified about
 8 how her depression and anxiety affect her sleeping, ability to drive, and ability to interact with
 9 others, including family members. AR 39, 47, 49. She explained her mental health symptoms
 10 improved briefly after taking medication, but have worsened again. AR 48. Plaintiff has
 11 continued to take medication but still has problems sleeping. AR 48–49. As to her physical
 12 health symptoms, Plaintiff testified about the pain in her joints, knees, shoulders, back, hands,
 13 fingers, and toes. AR 50. Because of her overall body pain, Plaintiff explained she is "tired all
 14 the time," needs to lie down every 15 to 20 minutes during a normal eight-hour workday, and
 15 can only sit upright up to 15 minutes before having to change positions. AR 50–51. Plaintiff also
 16 testified to having problems with her memory. AR 39.

17 In this case, the ALJ erred in rejecting Plaintiff's testimony about her mental health
 18 symptoms. The ALJ found Plaintiff's testimony inconsistent with the medical evidence and cited
 19 to *physical* examinations showing Plaintiff often had normal affect, speech, thought process,
 20 memory, judgment, and content. AR 21–22. But the ALJ did not explain how these findings
 21 contradict Plaintiff's testimony about her depression and anxiety affecting her sleeping habits
 22 and ability to drive, work, or interact with others. Besides these treatment notes, the ALJ cited to
 23 no other medical evidence that supports the finding that the medical evidence was inconsistent

1 with Plaintiff's statements. Without more, the Court cannot say the ALJ provided a clear and
 2 convincing reason to reject Plaintiff's testimony about her mental health symptoms.

3 The Court finds, on the other hand, that the ALJ did provide a clear and convincing
 4 reason to reject Plaintiff's testimony about her overall body pain and fatigue. The ALJ
 5 reasonably found the severity of pain and fatigue that Plaintiff testified to was not reflected in her
 6 medical records. AR 20. Though Plaintiff presented with complaints about pain and fatigue, her
 7 physical examinations showed no weakness in either of her extremities and no restriction of
 8 movement in her joints. AR 273–74, 319. Despite Plaintiff's complaints, she was observed as
 9 having a full range of motion in her hands, wrist, ankles, and normal internal rotation with her
 10 hips. AR 278–80. Plaintiff's shoulder was “overall stable” and “normal.” AR 307. Despite
 11 complaints of knee pain and some swelling, Plaintiff's knee was observed as “stable” and
 12 “normal.” AR 311–12. Her lower leg was “normal” despite some tenderness. AR 612.

13 Additionally, Dr. Hale found Plaintiff's statements about her pain only “partially
 14 consistent” with Plaintiff's medical records. AR 65. Dr. Hale noted that despite Plaintiff's
 15 complaint of ongoing pain, her physical examinations consistently demonstrated full range of
 16 motion and “5/5 strength throughout,” and opined Plaintiff could sit, stand, and/or walk for about
 17 six hours in an eight-hour workday with normal breaks. *Id.* An ALJ offers a clear and convincing
 18 reason in discounting a claimant's testimony when it is inconsistent with objective medical
 19 evidence. *See Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008)
 20 (“Contradiction with the medical record is a sufficient basis for rejecting the claimant's
 21 subjective testimony.”); *see also Jennings v. Saul*, 804 F. App'x 458, 463 (9th Cir. 2020) (ALJ
 22 offered clear and convincing reasons for rejecting claimant's testimony where it was
 23 “inconsistent with the objective medical evidence and the medical record as a whole”).

1 Considering Plaintiff's medical record consistently showed her having a full range of motion and
 2 full strength while she simultaneously reported body pain and fatigue, the ALJ could reasonably
 3 find Plaintiff's statements about her physical symptoms were not as severe as she alleged.

4 In sum, because the ALJ failed to explain how the medical evidence regarding Plaintiff's
 5 physical examinations contradicts Plaintiff's testimony about her mental health symptoms, the
 6 ALJ erred in rejecting this part of Plaintiff's testimony. But because Plaintiff's medical records
 7 show that Plaintiff was not as physically restricted as she alleged, the Court finds the ALJ's
 8 rejection of Plaintiff's testimony about her physical symptoms is supported by substantial
 9 evidence in the record.

10 **B. Dr. Shah's Opinion**

11 On March 27, 2017, regulations became effective that require ALJs to consider the
 12 persuasiveness of the medical opinion using five factors (supportability, consistency, relationship
 13 with claimant, specialization, and other), with supportability and consistency being the two most
 14 important factors. 20 C.F.R. § 416.920c(a), 404.1520c(b)(2), (c). Supportability means the extent
 15 to which a medical source supports the medical opinion by explaining the "relevant ... objective
 16 medical evidence." 20 C.F.R. § 416.920c(c)(1), § 404.1520c(c)(1). Consistency means the extent
 17 to which a medical opinion is "consistent ... with the evidence from other medical sources and
 18 nonmedical sources in the claim." 20 C.F.R. § 416.920c(c)(2), § 404.1520c(c)(2). The ALJ's
 19 decision must explain how the ALJ considered the factors of supportability and consistency, 20
 20 C.F.R. § 416.920c(b), and must be supported by substantial evidence. The agency must
 21 "articulate ... how persuasive" it finds "all of the medical opinions" from each doctor or other
 22 source, 20 C.F.R. § 404.1520c(b), and "explain how [it] considered the supportability and
 23 consistency factors" in reaching these findings. *Id.* § 404.1520c(b)(2).

1 In *Woods v. Kijakazi*, 32 F.4th 785 (9th Cir. 2022), the Court of Appeals held these
 2 regulations governing applications filed after March 27, 2017, supplant the hierarchy governing
 3 the weight an ALJ must give medical opinions and the requirement that the ALJ provide specific
 4 and legitimate reasons to reject a doctor's opinion. The Ninth Circuit also stated that "an ALJ
 5 cannot reject an examining or treating doctor's opinion as unsupported or inconsistent without
 6 providing an explanation supported by substantial evidence. *Woods*, 32 F.4th at 792.

7 Plaintiff contends the ALJ erred by ignoring the medical opinion of Amie Shah, M.D.,
 8 one of Plaintiff's treating providers.² Dkt. No. 11, at 5–6. Dr. Shah completed a questionnaire
 9 prepared by Plaintiff's counsel on July 16, 2020 that lists a series of statements and poses
 10 questions about Plaintiff's impairments and her ability to work. AR 923–25. For example, one of
 11 the questions posed was, "Is [Plaintiff] treated for medical conditions that would interfere with
 12 prolonged standing, walking or sitting upright, use of either upper extremity for reaching,
 13 holding, handling or fingering, and/or would require that her lay down at time during the day?"
 14 AR 923. For this question, Dr. Shah circled "Yes." *Id.* Another question consisted of a checklist
 15 asking Dr. Shah to mark which of the following the opinions expressed in the questionnaire were
 16 based on: "My own observations, the medical record and professional expertise" or "The
 17 patient's statements." AR 925. For this question, Dr. Shah checked both. *Id.*

18 The Commissioner concedes the ALJ failed to consider the questionnaire, but contends
 19 this was harmless error because it was based heavily on Plaintiff's self-reports. Dkt. No. 14, at 8.
 20 The argument fails for two reasons.

21 First, although the Commissioner correctly points out the ALJ can reject a medical

23 ² See AR 696, 703, 709–14, 720–28, 731–34, 736–66, 769–74, 777–82, 787–90, 797–805, 807–10, 812–36, 846–
 56, 864–78, 885–92, 894–969.

1 opinion if it relies on the statements of a plaintiff who has not been found credible, the Court
 2 cannot say whether the ALJ did so properly or improperly here for that reason because the ALJ
 3 did not discuss Dr. Shah’s medical opinion at all. The ALJ “must provide sufficient reasoning
 4 that allows us to perform our own review, because the grounds upon which an administrative
 5 order must be judged are those upon which the record discloses that its action was
 6 based.” *Lambert v. Saul*, 980 F.3d 1266, 1277 (9th Cir. 2020) (quoting *Treichler v. Comm’r of*
 7 *Soc. Sec. Admin.*, 775 F.3d 1090, 1102 (9th Cir. 2014)). Here, the ALJ did not acknowledge Dr.
 8 Shah’s medical opinion, let alone provide an explanation as to whether the opinion should be
 9 rejected or credited. The Court cannot determine the validity of a reason that was not provided
 10 and certainly cannot rely upon the post hoc rationale the Commissioner now posits. Further, as
 11 Dr. Shah’s opinions were based not only on Plaintiff’s statements but also on Dr. Shah’s “own
 12 observations, the medical record and professional expertise,” *see* AR 925, the record alone
 13 cannot provide an independent basis for affirming the ALJ’s unexplained opinion.

14 Second, ignoring the medical opinion of a treating doctor is not harmless error because in
 15 doing so, the ALJ “provide[s] an incomplete residual functional capacity [(“RFC”)]
 16 determination.” *See Hill*, 698 F.3d at 1161.

17 A person’s RFC “is the most [the person] can still do despite [his/her] limitations.” 20
 18 C.F.R. §§ 404.1545(a), 416.945(a). The claimant’s RFC is used by an ALJ to determine whether
 19 a claimant is able to perform past relevant work and whether there are jobs that exist in
 20 significant numbers in the national economy that the claimant can perform, such that the
 21 claimant is not “disabled.” 20 C.F.R. §§ 404.1520(f), (g). In making an RFC determination, the
 22 ALJ was required to assess Plaintiff’s RFC “based on all of the relevant medical and other
 23 evidence,” including Plaintiff’s “medically determinable impairments,” whether or not they are

1 severe, as well as “any statements about what [Plaintiff] can still do that have been provided by
2 medical sources, whether or not they are based on formal medical examinations.” *See* 20 C.F.R.
3 §§ 404.1545(a), 416.945(a).

4 In this case, by omitting the evaluation of Dr. Shah’s medical opinion, the ALJ failed to
5 account for all of Plaintiff’s limitations, rendering Plaintiff’s RFC determination incomplete.
6 This is harmful error because, to support a finding that a claimant is not disabled, the ALJ relied
7 on the testimony of a vocational expert, by posing a hypothetical of whether there are jobs
8 available in the national economy for an individual of Plaintiff’s age, education, work
9 experience, and RFC. As Plaintiff’s RFC was incomplete, the hypothetical question presented to
10 the vocational expert was also necessarily incomplete, “and therefore the ALJ’s reliance on the
11 vocational expert’s answers [is] improper.” *Hill*, 698 F.3d at 1162.

12 The Court thus concludes that the ALJ erred in failing to address Dr. Shah’s opinions,
13 and that such error was not harmless.

14 **C. Plaintiff’s Mental Health RFC**

15 Plaintiff contends the ALJ erred for failing to base her mental health RFC on any of the
16 medical opinions the ALJ accepted. Dkt. No. 11, at 11. An ALJ must assess a claimant’s RFC
17 “based on all the relevant evidence in [the] case record,” 20 C.F.R. §§ 404.1545(a)(1),
18 416.945(a)(1), but there is no requirement to base the RFC on one or more medical opinions. 20
19 C.F.R. §§ 404.1545 (a)(3) and 416.945(a)(3). In this case, the ALJ determined Plaintiff “has no
20 limitations in understanding and memory; can concentrate long enough to complete work
21 assignments.” AR 20. These limitations are nearly identical to—and so presumably drawn
22 from—the findings of Dr. Borton, who found Plaintiff has no understanding and memory
23 limitations and is “able to concentrate long enough to complete work assignments within an

1 acceptable time frame." AR 76. The Court, therefore, cannot say that the ALJ's mental RFC
2 assessment was erroneous for the reason posited by Plaintiff. However, for the reasons discussed
3 in the previous section, the ALJ harmfully erred in assessing Plaintiff's RFC by failing to
4 consider Dr. Shah's opinion. Thus, even though the ALJ's mental RFC determination is
5 supported by the record, Plaintiff's RFC must nonetheless be reassessed.

6 **III. CONCLUSION**

7 For the foregoing reasons, the Commissioner's final decision is REVERSED, IN PART, and
8 this case is REMANDED for further administrative proceedings under 42 U.S.C. § 405(g).

9 On remand, the ALJ shall reevaluate Plaintiff's testimony about her mental health,
10 articulate findings with regard to Dr. Shah's opinion, develop the record and reassess Plaintiff's
11 residual functional capacity as needed, and proceed to the remaining steps of the disability
12 evaluation process.

13 Dated this 28th day of June 2022.

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16 Tana Lin
17 United States District Judge
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